

STATE DEFENSE FORCE IMPROVEMENT ACT 32 USC 109



Background

State Defense Forces are state agencies, authorized by existing law 32 USC 109 that operate under the command of their Governors and provide critical domestic support during times of emergency, including wildfires, floods, and public health emergencies, including in joint operations with the National Guard and other federal, state, and local agencies. State Defense Forces, known in some jurisdictions as State Guards (collectively, SDF), also enhance the federal readiness of their states' National Guards by allowing them to focus on its federal missions, by providing critical operational, administrative and maintenance support, and by providing direct legal assistance, chaplain, mental health, and other state support to National Guard soldiers, airmen, and their families.

Improper and overly restrictive implementation of the statute establishing SDF nearly prohibited DoD interaction with or support of [State Defense Forces]

Inspector General,
Department of Defense

[I]t is a matter of urgent importance that there be no break between the time that the National Guard units might be called into Federal service and the time the states could raise additional forces to replace them. I therefore recommend that the Congress enact legislation which would permit the states to raise and maintain in times of peace organized militia forces which would take over the National Guard's domestic and missions and support civil defense upon its withdrawal.

Dwight D. Eisenhower, 1955

In 2014, the Inspector General of the Department of Defense studied the interpretation of 32 USC 109 and the effect it had on interaction with the Department of Defense (DoD) and National Guard Bureau (NGB).¹ The Inspector General concluded that not only were organizations “misinterpreting and improperly applying U.S. federal fiscal laws and regulations governing SDF,” but also found that “National Guard Bureau policy with regard to SDF was overly restrictive.”

Specifically, the Inspector General found that the “limitations on the use of Federal funds enumerated in Section 109(d)” were being misinterpreted to “prohibit any and all interaction, coordination, or cooperation between SDF and DoD entities.” This near prohibition of federal support creates a massive opportunity cost in effectively utilizing SDFs as the home guard.

¹ <https://media.defense.gov/2014/Apr/30/2001713359/-1/-1/1/DODIG-2014-065.pdf>

A recent *Army Times* article found that as the National Guard “has mobilized more Guard members, for longer, than at any time since World War II,”² the states are in growing need of enhanced response capabilities for emergencies such as wildfires, earthquakes, floods, and pandemics.

Proposed Revisions

While existing law (32 USC 109) provides authority for states to maintain State Defense Forces, the wording of that law has created confusion and impaired Governors' and State Adjutant Generals' ability to effectively utilize their State Defense Forces to support their National Guard. The original intent of 32 USC 109 was to prohibit members of SDF from receiving federal military pay or benefits, rather than prohibiting all DoD support.

The proposed revisions to 32 USC 109 would delete the confusing enumerations of prohibitions that have been used to prevent states from including SDF capabilities in federal mission planning and execution. The revised language would track the DoD Inspector General's recommendation that SDF “be considered as any other State agency with respect to State Defense Forces preparation for and participation in Federal responses, and the related use of Federal equipment.” The revisions put SDF on par with any other state agency that is eligible to receive surplus federal equipment, such as a local sheriff's department and other emergency responders.

Bill Overview

- Removes uncertainty regarding the ability of Adjutants General to use their State Defense Forces to support their National Guards, respond to emergencies, and use existing National Guard resources and equipment.
- Removes barriers to DOD, DHS and other federal agency training and support to State Defense Forces, including access to surplus federal equipment and the provision of background checks to enhance security.
- Allows Adjutants General to authorize limited exchange privileges for State Defense Forces, like those already provided to the Civil Air Patrol and Coast Guard Auxiliary.

² <https://www.armytimes.com/news/your-army/2021/01/04/new-in-2021-the-national-guard-will-stay-busy-in-2021/>

SDF are a volunteer, trained, and organized response force ready to respond to the needs of their state. As emergency responders, SDF provide unique response capabilities that can seamlessly integrate with their National Guard counterparts as well as civil authorities in their state’s disaster response system. In a time of limited resources and increasing natural disasters, it is critical that the federal legislation be revised to fully leverage the critical manpower SDF offer at minimal costs. Moreover, enhanced SDF support to the National Guard, including JAG legal assistance, chaplain, medical, and maintenance of federal equipment, will enhance the federal readiness of the National Guard.

Top 3 Myths About the SDF Improvement Act	
Myth: This bill would make SDF eligible for DoD allowances, subsistence, transportation, and medical care or treatment.	Fact: SDF would not be eligible for any new Federal benefits, such as pay, pensions, and access to the Federal military healthcare system.
Myth: This bill would authorize the use of DoD funds, resources, and equipment by defense force personnel for their own purposes.	Fact: Federal resources and equipment never leave the existing command and control of the federally recognized Adjutant General.
Myth: This bill would create an expectation that DoD and other Federal agencies would provide training, equipment, or other support to State and territorial defense forces and personnel.	Fact: No expectations of federal training of SDF are being created nor are funds or equipment being requested or reallocated. States are already in possession of any federal equipment used by SDF.

Recent SDF Missions

SDF across the country have leveraged the power of all-volunteer forces to develop wildland firefighting hand crews, inland and littoral search and rescue, and specialty corps such as cybersecurity, medical, legal, security, and maritime. These forces train for free year-round and are ready to respond to their needs of their states.

In 2020 alone, over 1,200 SDF forces were mobilized across the country in support of pandemic response missions.³ Some other recent highlights include:

- California State Guard trained with CalFire and served on the fire lines with the National Guard.
- New York State Guard deployed with their National Guard counterparts for COVID-19 vaccine missions.
- Texas State Guard activated to stand up and staff warming shelters during severe winter snowstorms.

³ <https://sgaus.org/>